

the first paragraph. In other words, by the coöperation of the two paragraphs, authority is given on the one hand, to enforce compliance with the orders of the Commission if lawful, and, on the other hand, power is conferred to stay the enforcement of an illegal order. The other provisions of the act are equally convincing. Thus, § 3 (208), provides that the mere pendency of a suit to enjoin, set aside, annul or suspend an order of the Commission "shall not stay or suspend the operation of such order" but confers upon the court the power, under circumstances stated, to restrain or suspend in whole or in part the operation of an order. The same section, moreover, causes the meaning of the provision, if possible, to become clearer by making a finding that irreparable injury will result from the operation of an order sought to be enforced, essential to the granting of an order or injunction restraining or suspending its enforcement.

We might well be content to rest our conclusion upon the considerations just stated. In view, however, of the importance of the subject we do not do so, but shall consider the matter in a broader aspect for the purpose of demonstrating that to give to the statute a meaning contrary to that which we have found results from its text, and therefore to recognize the existence in the court below of the power which it deemed it possessed would result in frustrating the legislative public policy which led to the adoption of the act to regulate commerce, would render impossible a resort to the remedies which the statute was enacted to afford, would multiply the evils which the act to regulate commerce was adopted to prevent, and thus bring about disaster by creating confusion and conflict where clearness and unity of action was contemplated. It cannot be disputed that the act creating the Commerce Court was intended to be but a part of the existing system for the regulation of interstate commerce, which was established by virtue of the original adoption in 1887 of the

225 U. S.

Opinion of the Court.

act to regulate commerce, and which was expanded by the repeated amendments of that act which followed, developed in practical execution by the rulings of the body (Interstate Commerce Commission), upon whom was cast the administrative enforcement of the act, the whole elucidated and sanctioned by a long line of decisions of this court. That in adopting the provisions concerning the Commerce Court and making it part of the system, it was not intended to destroy the existing machinery or method of regulation, but to cause it to be more efficient by affording a more harmonious means for securing the judicial enforcement of the act to regulate commerce is certain. The act creating the Commerce Court (June 18, 1910, 36 Stat. 539, c. 309) was entitled "An Act to create a Commerce Court, and to amend the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes." The first six sections, which called into being the Commerce Court and defined its powers, all demonstrate the purpose as above stated, that is, to adjust the powers and duties of the newly created court in such manner as to cause them to accord with the system of regulation provided by the act to regulate commerce as it then existed.

What was then the existing system and the functions which the new court was created to perform will be conclusively shown by a brief outline of the scope and purpose of the system which arose from the enactment of the act to regulate commerce (Act February 4, 1887, c. 104, 24 Stat. 379) and its development. By that act as originally enacted many regulations and consequent duties were imposed upon carriers in the interest of the public and of shippers which did not theretofore exist, and various administrative safeguards were formulated, all of which, in their very essence, required, first, for their compulsory enforcement the exercise of official functions of an adminis-

trative nature, and, second, for their harmonious development an official unity of action which could only be brought about by a single administrative initiative and primary control. To that end the act (§ 11) created an administrative body endowed with what may be in some respects qualified as *quasi*-judicial attributes, to whom was confided the enforcement of those provisions of the act which essentially exacted unity in order that they might beneficially operate. And for the purposes stated, to the body thus created was committed the trust of enforcing the act in the respect stated, of determining, limited as to the subject-matters to which we have referred, whether the provisions of the act had been violated and if so of primarily enforcing the act by awarding appropriate relief. The statute, therefore, necessarily, while it created new rights in favor of shippers, in order to make those rights fruitful as to the subjects with which the statute dealt coming within the scope of the administrative unity which we have mentioned primarily made the judgment of the administrative body to whom the statute confided the enforcement of the act in the respects stated a prerequisite to a resort to the courts. In other words, as to the subjects stated the act did not give to the courts power to hear the complaint of a party concerning a violation of the act, but only conferred power to give effect to such complaints, when by previous submission to the Commission, they had been sanctioned by a command of that body.

In the long interval which intervened between 1887 when the act to regulate commerce was enacted and June 18, 1910, when the Commerce Court act was passed we have learned of no instance where it was held or even seriously asserted, that as to subjects which in their nature were administrative and within the competency of the Commission to decide, there was power in a court, by an exercise of original action, to enforce its conceptions as

to the meaning of the act to regulate commerce by dealing directly with the subject irrespective of any prior affirmative command or action by the Interstate Commerce Commission. On the contrary, by a long line of decisions, whereby applications to enforce orders of the Commission were considered and disposed of or where requests to restrain the enforcement of such orders were passed upon, it appears by the reasoning indulged in that it was never considered that there was power in the courts as an original question without previous affirmative action by the Commission to deal with what might be termed in a broad sense the administrative features of the act to regulate commerce by determining as an original question that there had been a compliance or non-compliance with the provisions of the act. The subject is illustrated and made clear by the rulings in *State of Washington, ex rel. Oregon Railroad & Navigation Co. v. Fairchild*, 224 U. S. 510; *Robinson v. Balto. & Ohio R. R.*, 222 U. S. 506; *Southern Railway Co. v. Reid*, 222 U. S. 424, and *Texas & Pacific Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426. The latter case especially will serve to point out that where the power of original action by a court without previous action of the Commission was insisted upon, it was based upon the conception that the particular subject-matter as to which such power was asserted was by the express terms of the act to regulate commerce not embraced within the subjects primarily confided by the act exclusively to the administrative authority of the Commission.

Originally the duty of the courts to determine whether an order of the Commission should or should not be enforced carried with it the obligation to consider both the facts and the law. But it had come to pass prior to the passage of the act creating the Commerce Court that in considering the subject of orders of the Commission, for the purpose of enforcing or restraining their enforcement, the courts

were confined by statutory operation to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred although it may be not technically doing so. *Int. Com. Comm. v. Union Pacific R. R.*, 222 U. S. 541, 547; *Int. Com. Comm. v. Ill. Cent. R. R.*, 215 U. S. 452. So also at the time the law creating the Commerce Court was passed, suits to compel obedience to orders of the Commission or to restrain an enforcement of such orders were required to be brought in the Circuit Court of the United States in the district where a carrier or one of two or more carriers to whom the order was directed had its principal operating office.

In view of the provisions of the act to regulate commerce just referred to as originally enacted, of the legislative evolution of that act, its uniform practical enforcement and the constant judicial interpretation which we have thus briefly indicated, it is impossible, we think, in reason, to give to the act creating the Commerce Court the meaning affixed to it by the court below, since to do so would be virtually to overthrow the entire system which had arisen from the adoption and enforcement of the act to regulate commerce. First, because as the previous ascertainment by the Commission on complaint made to it as to whether violations of the act had been committed, with reference to the subjects as to which previous action was required, was an essential prerequisite to a right to complain in a court, the interpretation given below would, by destroying the necessity for the prerequisite, action of the Commission, operate to create a vast body of rights which had no existence at the time the Commerce Court act was passed. Second, because the recognition of a right in a court to assert the power now claimed would of necessity amount to a substitution of

the court for the Commission or at all events would be to create a divided authority on a matter where from the beginning primary singleness of action and unity was deemed to be imperative. Third, because the result of the interpretation would be to bring about the contradiction and the confusion which it had been the inflexible purpose of the lawmaker from the beginning to guard against, an interpretation which would seemingly create rights hitherto non-existent and yet at once proceed to destroy such rights by bringing about a confusion which would render the rights which the act creates practically valueless. Indeed, these inevitable results of the interpretation given by the court below to the act would necessarily amount to declaring that Congress in seeking to unify and perfect the administrative machinery of the act to regulate commerce and to make more beneficial its operation had overthrown the whole fabric of the system as previously existing.

The demonstration of the error of the construction adopted below is so additionally made manifest by a consideration of the general structure and the text of the act creating the Commerce Court, that in connection with the legislative history which we have previously stated, that we advert to that point of view: A. The first section of the act wherein is recited the jurisdiction of the Commerce Court which we have previously commented upon makes clear that the purpose was not to create a court with new and strange powers destructive of the previous well-established administrative authority of the Interstate Commerce Commission and in conflict with the general jurisdiction vested in the courts of the United States, but only to give to the new court the special jurisdiction then possessed by the courts of the United States for the enforcement of orders made by the Commission, and thus to unify the exertion of judicial power with reference to the enforcement of the orders of the Commission. The

opening words of the section which make this result clear are as follows: It (the Commerce Court) shall "have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds: . . .". B. Because the enumeration as to the subject-matters of jurisdiction conferred which follows the words just quoted, which enumeration we have previously reproduced and commented upon, conforms to the existing law and evidently assumes its continued operation. C. Because the sedulous effort of Congress while creating the new machinery not to destroy the existing system finds expression in a two-fold way: (1) by the declaration that nothing in the fact that the existing power of the Circuit Courts as to the subjects of jurisdiction transferred to the new court should be deemed as an enlarging of those powers, and (2) by the provision that nothing in the transfer of the enumerated powers to the Commerce Court should be considered as limiting or abridging the existing jurisdiction possessed by the Circuit Courts as to things and subject-matters not embraced in the powers transferred. Thus the two provisos again serving to make clear the legislative intent that the creation of a new body to exercise a portion of the existing judicial power should not in any way enlarge the power as existing or be implied as destroying or minimizing the general scope of the judicial power possessed by the Circuit Courts where such power was not embraced within the authority transferred to the new body. D. Because the act which created the court contained in its latter sections provisions amending sections of the act to regulate commerce which when rightly interpreted were manifestly adopted to make that act more consistent with the new situation resulting from the creation of the new court and utterly inconsistent with the conception that that court had power not previously possessed by any court and the existence of which would serve to set

at naught the whole system of interstate commerce regulation.

Some suggestion is made in argument concerning the alleged claim of constitutional right asserted in the petition filed below and which the court disposed of in the manner we have stated. But what we have said suffices to point out the fallacy which the contention involves, for the following reasons: If the claim of constitutional rights concerned a subject which from its very nature and effect dominated the act to regulate commerce and therefore was wholly independent of all questions of right or remedy created by or depending upon that statute, then the issue presented a controversy not cognizable in the Commerce Court, as it could not so be without violating the express reservation and restriction as to the general power of the Circuit Courts which we have just quoted. If, on the other hand, the constitutional question was involved in or depended upon the provisions of the act to regulate commerce that question in the nature of things was subject to the precedent action of the Commission on the subjects committed to it by the act to regulate commerce and as to which the court had jurisdiction alone to act in virtue of a prior affirmative order of the Commission.

The general considerations which we have stated establish the error committed by the court below in holding that it had jurisdiction over the claim of the Procter & Gamble Company to recover on a money demand based on the illegality of the demurrage charges alleged to have been wrongfully exacted by the railroad companies. Through abundance of precaution, we, however, say that wholly irrespective of the general considerations stated we think the conclusion of the court as to its possession of jurisdiction over the subject referred to was clearly repugnant in other respects to the express terms of the act.

As it follows from what we have said that the court below erred in taking jurisdiction of the petition, it results



Argument for Appellants.

225 U. S.

that our duty is to remand the cause to the court below with directions to dismiss the petition for want of jurisdiction,

*And it is so ordered.*

